

## **STATE LANDS COMMISSION**

### **REGULATIONS GOVERNING THE COLLECTION OF INFORMATION RELATING TO THE INSTALLATION AND USE OF BALLAST WATER TREATMENT TECHNOLOGIES IN CALIFORNIA WATERS**

#### **INITIAL STATEMENT OF REASONS**

#### **TITLE 2, DIVISION 3, CHAPTER 1, ARTICLE 4.7**

##### **SPECIFIC PURPOSE OF THE REGULATION**

The specific purpose of the amendment to Article 4.7 is to add Section 2297.1 which would provide a format for reporting information about ballast water treatment technology installation and use in California waters in order to implement the provisions of Public Resources Code Section 71205(g). The reports are required to be made to the California State Lands Commission (Commission) by the master, owner, operator, agent, or person in charge of a vessel that has a ballast water treatment system installed on board and has discharged treated ballast in the waters of the state.

##### **NECESSITY**

Public Resources Code (PRC) Section 71205(g)(1) authorizes the California State Lands Commission (Commission) to collect information regarding the installation and use of ballast water treatment technologies on all vessels that discharge treated ballast water into the waters of the State. Public Resources Code Section 71205(g)(2) requires the master, owner, operator, agent, or person in charge of a vessel to submit the information required by PRC Section 71205(g)(1) on a form to be developed by the Commission.

In order to comply with the requirements of PRC Section 71205(g) the Commission considers it necessary to provide the shipping industry with a uniform format that has regulatory authority for reporting, and making explicit, the information required to be reported by PRC Section 71205(g) . The Commission believes that forms with regulatory authority will be most effective in the reporting and acquisition of the required information. The Commission believes that unless the forms have regulatory authority, the information reported may not be timely or accurate.

These forms were developed in consultation with stakeholders, including representatives from the shipping industry, researchers, and government agencies. The proposed "Ballast Water Treatment Technology Annual Reporting Form" and the "Ballast Water Treatment Supplemental Reporting Form" will allow the Commission to gather information on the installation and use of ballast water treatment technologies on vessels operating in the waters of California. This information is important as ballast water is a significant vector for the transfer of nonindigenous species into the waters of

the State and therefore presents risks to public health and safety, as well as the environment. The proposed regulatory forms would specify the information to be reported to the Commission in compliance with PRC Section 71205(g) in order for the Commission to gather data on treatment system installation and use in California waters. As many vessels will use ballast water treatment systems to comply with California's performance standards for the discharge of ballast water, this data will aid the Commission in the effective implementation of those standards.

#### TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

Commission staff developed drafts of the proposed forms based on the requirements in PRC Section 71205(g). Commission staff convened a Technical Advisory Panel (TAP) consisting of representatives from the shipping industry, environmental organizations, and other government agencies for several meetings held between June and September 2009. During these meetings, the TAP discussed the contents of the draft forms and made comments and suggestions. Based on initial input from the TAP, the information required by PRC Section 71205(g) was split across two forms – one to be collected annually and one to be collected following discharge. Second drafts of the proposed forms were distributed to the TAP electronically on July 28, 2009. Comments and suggestions regarding the second drafts were incorporated into a third draft that was distributed to the TAP electronically on September 8, 2009.

#### Additional Reference Documents:

United States Coast Guard. Ballast Water Reporting Form. OMB Control Number 1625-0069.

#### REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Commission Staff has determined that there are no alternatives considered which would be more effective in carrying out the purpose of the proposed regulations or would be as effective and less burdensome to affected private persons. However, the regulated community may suggest alternatives that are equally effective and less burdensome.

#### SMALL BUSINESS IMPACTS

The Commission finds that the proposed amendments to Title 2, Division 3, Chapter 1, Article 4.7 of the California Code of Regulations will not have a significant adverse impact on small business. None of the businesses that will be governed by the proposed regulations can be considered to be a "small business" as defined in Government Code Section 11342.610.

**Title 2, Division 3, Chapter 1, Article 4.7**  
**Performance Standards for the Discharge of Ballast Water For**  
**Vessels Operating in California Waters**

The following is the initial statement of reasons for each of the regulations. Prior to the explanation for each provision, the text of the regulation is set forth and indented. Proposed amendments to the regulation are underlined.

**Section 2297.1. Treatment Technology Reporting Requirements**

(a) Ballast Water Treatment Technology Annual Reporting Form

- (1) The following form “Ballast Water Treatment Technology Annual Reporting Form” is hereby incorporated by reference, and shall be used to comply with the provisions of Public Resources Code Section 71205(g) by the master, owner, operator, agent, or person in charge of a vessel that has a ballast water treatment system installed on board and has discharged treated ballast in waters of the state.

**SPECIFIC PURPOSE OF THE REGULATION**

Section 2297.1(a)(1) cites the “Ballast Water Treatment Technology Annual Reporting Form” by name and incorporates it by reference. The specific purpose of the regulation is to provide all masters, owners, operators, agents, or persons in charge of a vessel that has a ballast water treatment system installed on board and has discharged treated ballast in waters of the state with a uniform format for reporting information about the installation, use and maintenance of ballast water treatment systems per the requirements in PRC Section 71205(g).

**NECESSITY**

The “Ballast Water Treatment Technology Annual Reporting Form” fulfills the requirements of PRC Section 71205(g). The form is necessary to enable the Commission to collect information on ballast water treatment system installation, use and maintenance from the master, owner, operator, agent, or person in charge of a vessel that has a ballast water treatment system installed on board that has discharged treated ballast in waters of the state. Many vessels will use ballast water treatment systems to meet the requirements of California’s performance standards for the discharge of ballast water. The information gathered by the form will help the Commission ensure the effective implementation of California’s performance standards.

The introductory questions require vessels to provide identification information about the vessel and the individual who filled out the form. This information is important to the Commission to properly track submittals from each vessel and to identify the party responsible for the information on the form.

Questions 1 will allow the Commission to gather information about the ballast water treatment system installed on board the vessel. The Manufacturer/Company, Product Name and Model Number are all common identifiers to describe ballast water treatment systems.

Question 1a inquires about the mode of action that the treatment system employs in order to treat the ballast water. Some of the most common modes of action are provided, or the vessel may describe another different mode of action, as appropriate. Ballast water treatment systems may employ many modes of action in order to kill or deactivate organisms in ballast water. This question will allow the Commission to gather information on the most frequently used mode(s) of action for systems operating in California waters.

Question 1b gathers information about the substances created or used by the treatment system. PRC Section 71205(h)(2) requires vessels to keep Material Safety Data Sheets on board for applicable substances. This question gathers information about what substances are on board and verifies compliance with the law to maintain a MSDS on board, as applicable. This information will be useful to track the most commonly used substances to treat ballast water, and may help inform the Commission's assessment of environmental impacts, including water quality, from treatment system use (per PRC Section 71205.3).

Question 1c inquires about the maintenance of manufacturer's technical guides, publication and/or manuals for the treatment system on board. PRC Section 71205(h)(3) requires vessels to keep this material on board. Therefore this question asks the vessel about compliance with the law.

Question 2 will allow the Commission to gather information about when the system received classification society approval for operation on the vessel. This information will indicate how long the system has been approved for use on the vessel. The age of the system may relate to system efficacy and method of operation which will be useful information as the Commission continues to assess the efficacy and availability of treatment systems (as required by PRC Section 71205.3).

Question 3 will allow the Commission to gather information about whether or not the ballast water treatment system was installed as part of an out of water dry docking or without the need for dry docking. This information will help inform the Commission about the potential costs and time requirements for treatment system installation.

Question 4 will allow the Commission to gather information on upgrades or modifications to the system since classification society approval. Any upgrade or modification to ballast water treatment systems may alter the system's mode of action or may relate to changes in system efficacy. This information will be useful for the Commission to track available treatment systems and may relate to system performance.

Question 5 will allow the Commission to gather information on unscheduled or emergency maintenance performed on the system. Unscheduled or emergency maintenance may be in response to problems with system operation. The Commission must remain informed of these situations in order to assess system reliability and ability to meet California's performance standards on a consistent basis.

Question 6 will verify vessel compliance with the requirement to maintain a ballast water treatment performance log on board. Per PRC Section 71205(h)(4) vessels must keep ballast water treatment system performance information on board. This question verifies vessel compliance with the law.

Question 7 will allow the Commission to gather information about the frequency of system performance verification. While California law does not require vessels do conduct performance verification, vessels that verify the performance of the ballast water treatment system on a regular basis may be more likely to comply with California's performance standards. The Commission will gather information in order to assess correlations between performance verification and regulatory compliance.

#### ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS.

The Commission staff has determined that there are no alternatives which would be more effective in carrying out the purposes of the proposed regulation or would be as effective and less burdensome to affected private persons.

#### **Section 2297.1. Treatment Technology Reporting Requirements**

##### **(a) Ballast Water Treatment Technology Annual Reporting Form**

**(2) The "Ballast Water Treatment Technology Annual Reporting Form" shall be submitted to the Commission in written or electronic form based on the following schedule:**

**(A) No later than March 1 each year; or**

**(B) Within 60 days of receiving a written or electronic request from the Commission.**

#### SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of the regulation is to state how and when the "Ballast Water Treatment Technology Annual Reporting Form" must be submitted to the Commission each year.

## NECESSITY

The regulation is necessary to indicate that the “Ballast Water Treatment Technology Annual Reporting Form” may be submitted either in written or electronic format. A schedule is necessary to ensure reliable and timely submission of the form each year. The two options for date of submission – March 1 or within 60 days of receiving a written or electronic request – will cover both vessels that regularly operate in California waters and those that only occasionally visit California ports.

## ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS.

The Commission staff has determined that there are no alternatives which would be more effective in carrying out the purposes of the proposed regulation or would be as effective and less burdensome to affected private persons.

### **Section 2297.1. Treatment Technology Reporting Requirements**

#### **b) Ballast Water Treatment Supplemental Reporting Form**

- (1) The following form “Ballast Water Treatment Supplemental Reporting Form” is hereby incorporated by reference, and shall be used to comply with the provisions of Public Resources Code Section 71205(g) by the master, owner, operator, agent, or person in charge of a vessel that has a ballast water treatment system installed on board and has discharged treated ballast in waters of the state.**

## SPECIFIC PURPOSE OF THE REGULATION

Section 2297.1(b)(1) cites the “Ballast Water Treatment Supplemental Reporting Form” by name and incorporates it by reference. The specific purpose of the regulation is to provide all masters, owners, operators, agents, or persons in charge of a vessel that has a ballast water treatment system installed on board and has discharged treated ballast in waters of the state with a uniform format for reporting information about the use and maintenance of ballast water treatment systems per the requirements in PRC Section 71205(g).

## NECESSITY

The “Ballast Water Treatment Supplemental Reporting Form” fulfills the requirements of PRC Section 71205(g). The form is necessary to enable the Commission to collect information on ballast water treatment system use and maintenance from the master, owner, operator, agent, or person in charge of a vessel that has a ballast water treatment system installed on board that has discharged treated ballast in waters of the

state. Many vessels will use ballast water treatment systems to meet the requirements of California's performance standards for the discharge of ballast water. The information gathered by this form will help the Commission ensure the effective implementation of California's performance standards.

The Amended Reporting Form question is necessary for the Commission to determine whether this is the first submittal of this form or whether it is an amended form in response to changes in ship's ballast water operations.

The Vessel Information and Voyage Information questions require vessels to provide identification information about the vessel and the California port of call relevant to the submission of this form. This information is important to the Commission to properly track submittals from each vessel.

Question 1 will allow the Commission to gather information about system malfunctions that could influence the ability of the vessel to treat ballast water in compliance with California's performance standards for the discharge of ballast water. The question provides the vessel with the opportunity to indicate the malfunction and describe how it was resolved. This information may be useful to both the Commission and the regulated community to understand possible system malfunctions, the method of resolution and how malfunctions may relate to system performance.

Question 2 will allow the Commission to gather information about all ballast water that has been treated and discharged in California waters. Most vessels will use ballast water treatment systems in order to meet California's performance standards for the discharge of ballast water. Therefore it is important to track vessels that treat their ballast water in order to assess if and how those vessels are meeting the performance standards. Additionally, vessels are required to maintain ballast water treatment system performance information on board the vessel in accordance with PRC Section 71205(h)(4). This question requires information based on those performance records.

The format of the table is based upon the Ballast Water History table in the United States Coast Guard's Ballast Water Reporting Form. By maintaining the general format of the table with a pre-existing form, the Commission is attempting to reduce errors or confusion associated with filling out the form.

The table inquires about the source of the ballast water, the discharge location in California waters, and the date and volume of ballast water treated. As some treatment systems may employ multiple modes of action, space is provided for the date of first and second treatment (if applicable). This question includes information that must be maintained on board the vessel per PRC Section 71205(h)(4).

Question 3 provides the Commission with important information regarding the party responsible for the information on the form.

## ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS.

The Commission staff has determined that there are no alternatives which would be more effective in carrying out the purposes of the proposed regulation or would be as effective and less burdensome to affected private persons.

### **Section 2297.1. Treatment Technology Reporting Requirements**

#### **(b) Ballast Water Treatment Supplemental Reporting Form**

- (2) The “Ballast Water Treatment Supplemental Reporting Form” shall be submitted to the Commission in written or electronic form upon departure of that vessel from a California port or place of call if that vessel discharged treated ballast water into the waters of the state.

## SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of the regulation is to state how and when the “Ballast Water Treatment Supplemental Reporting Form” must be submitted to the Commission.

## NECESSITY

The regulation is necessary to indicate that the “Ballast Water Treatment Supplemental Reporting Form” may be submitted either in written or electronic format. A schedule is necessary to ensure reliable and timely submission of the form.

## ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS.

The Commission staff has determined that there are no alternatives which would be more effective in carrying out the purposes of the proposed regulation or would be as effective and less burdensome to affected private persons.